

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SOUTH FERRY LP #2, individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

KERRY K. KILLINGER, et al.,

Defendants.

CASE NO. C04-1599-JCC

FINAL ORDER APPROVING  
CLASS ACTION SETTLEMENT  
AND AWARDING ATTORNEYS'  
FEES AND EXPENSES

This matter comes before the Court on Lead Plaintiffs' motion for final approval of class action settlement and plan of allocation of settlement proceeds (Dkt. No. 269) and Lead Counsel's motion for award of attorneys' fees and reimbursement of expenses (Dkt. No. 270).

On June 5, 2012, this Court conducted a hearing to determine: (1) whether the terms and conditions of the Class Action Settlement Agreement dated October 5, 2011 (the "Settlement Agreement") are fair, reasonable, and adequate for the settlement of the Action now pending in this Court under the above caption, including the release of all Released Claims against Defendants and the other Released Parties, and should be approved; (2) whether judgment should be entered dismissing the Complaint on the merits and with prejudice in favor of Defendants and as against all persons or entities who are members of the Class herein who have not requested exclusion therefrom; (3) whether to approve the Plan of Allocation as a fair and reasonable method to allocate the settlement proceeds among the members of the Class; and (4) whether and

1 in what amount to award Plaintiffs' Counsel fees and reimbursement of expenses. The Court,  
2 having considered all matters submitted to it at the hearing and otherwise; and it appearing that a  
3 notice of the hearing substantially in the form approved by the Court was mailed to all persons or  
4 entities reasonably identifiable, who purchased the common stock of Washington Mutual, Inc.  
5 ("WMI") between April 15, 2003 and June 28, 2004, inclusive (the "Class Period"), as shown by  
6 the records of WMI's transfer agent, at the respective addresses set forth in such records, and that  
7 a summary notice of the hearing substantially in the form approved by the Court was published  
8 in the global edition of *The Wall Street Journal* and transmitted over the Global Media Circuit of  
9 *Business Wire* pursuant to the specifications of the Court; and the Court having considered and  
10 determined the fairness and reasonableness of the award of attorneys' fees and expenses  
11 requested; and all capitalized terms used but not otherwise defined herein having the meanings as  
12 set forth and defined in the Settlement Agreement.

13 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

14 1. The Court has jurisdiction over the subject matter of the Action, the Lead  
15 Plaintiffs, all Class Members, and the Defendants.

16 2. The Court finds that the prerequisites for a class action under Federal Rules of  
17 Civil Procedure 23 (a) and (b)(3) have been satisfied in that: (a) the number of Class Members is  
18 so numerous that joinder of all members thereof is impracticable; (b) there are questions of law  
19 and fact common to the Class; (c) the claims of the Class Representative are typical of the claims  
20 of the Class it seeks to represent; (d) the Class Representative and Plaintiffs' Co-Lead Counsel  
21 have and will fairly and adequately represent the interests of the Class; (e) the questions of law  
22 and fact common to the members of the Class predominate over any questions affecting only  
23 individual members of the Class; and (f) a class action is superior to other available methods for  
24 the fair and efficient adjudication of the controversy.  
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1           3.       Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby  
2 finally certifies this action as a class action on behalf of all persons who purchased the common  
3 stock of Washington Mutual, Inc. between April 15, 2003 and June 28, 2004, inclusive, and who  
4 were damaged thereby. Excluded from the Class are Washington Mutual, Inc. and the Individual  
5 Defendants; former defendants William W. Longbrake, Craig J. Chapman, James G. Vanasek  
6 and Michelle McCarthy; any other officers and directors of WMI during the Class Period;  
7 members of their immediate families and their legal representatives, heirs, successors or assigns;  
8 and any entity in which any of the Defendants or former defendants have or had a controlling  
9 interest. Also excluded from the Class are the persons and/or entities who requested exclusion  
10 from the Class as listed on Exhibit 1 annexed hereto.

11           4.       Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby  
12 finally certifies Walden Management Co. Pension Plan as Class Representative.

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14           5.       Notice of the pendency of this Action as a class action and of the proposed  
15 Settlement was given to all Class Members who could be identified with reasonable effort. The  
16 form and method of notifying the Class of the pendency of the Action as a class action and of the  
17 terms and conditions of the proposed Settlement met the requirements of Rule 23 of the Federal  
18 Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. §  
19 78u-4(a)(7) as amended by the Private Securities Litigation Reform Act of 1995, due process,  
20 and any other applicable law, constituted the best notice practicable under the circumstances, and  
21 constituted due and sufficient notice to all persons and entities entitled thereto. Plaintiffs' Co-  
22 Lead Counsel has filed with the Court proof of mailing of the Notice and Proof of Claim and  
23 proof of publication of the Publication Notice.

1           6.       The Settlement is approved as fair, reasonable, and adequate, and the Class  
2 Members and the parties are directed to consummate the Settlement in accordance with the terms  
3 and provisions of the Settlement Agreement.

4           7.       The Complaint, which the Court finds was filed on a good faith basis in  
5 accordance with the Private Securities Litigation Reform Act and Rule 11 of the Federal Rules of  
6 Civil Procedure based upon all publicly available information, is hereby dismissed with  
7 prejudice and without costs, as against the Defendants.

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9           8.       Lead Plaintiffs and members of the Class, on behalf of themselves, their heirs,  
10 executors, administrators, predecessors, successors and assigns, are hereby permanently barred  
11 and enjoined from instituting, commencing or prosecuting any and all claims, debts, demands,  
12 rights or causes of action or liabilities whatsoever (including, but not limited to, any claims for  
13 damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or  
14 liabilities whatsoever), whether known claims or Unknown Claims, whether based on federal,  
15 state, local, statutory or common law or any other law, rule or regulation, whether fixed or  
16 contingent, accrued or un-accrued, liquidated or un-liquidated, whether at law or in equity,  
17 matured or un-matured, whether class or individual in nature (i) that have been asserted in this  
18 Action or in the Chapter 11 Cases against any of the Released Parties relating to the purchase or  
19 sale of WMI common stock during the Class Period, including, without limitation, the  
20 Bankruptcy Claims, or (ii) that could have been asserted in the Action or the Chapter 11 Cases or  
21 in any forum against any of the Released Parties arising out of or based upon the allegations,  
22 transactions, facts, matters or occurrences, representations or omissions involved, set forth, or  
23 referred to in the Complaint and which relate to the purchase or sale of WMI common stock  
24 during the Class Period (the "Released Claims") against WMI, the Individual Defendants,  
25 Chapman, Longbrake, Vanasek, McCarthy and any and all of their past or present subsidiaries,  
26 parents, successors and predecessors, officers, directors, agents, employees, attorneys, advisors,

1 investment advisors, auditors, accountants, insurers, and any person, firm, trust, corporation,  
2 officer, director or other individual or entity in which WMI, the Individual Defendants or  
3 Longbrake, Chapman, McCarthy and Vanasek has or has had a controlling interest or which was  
4 or is related to or affiliated with WMI or any of the Individual Defendants, and the legal  
5 representatives, marital communities, heirs, successors in interest or assigns of any of the  
6 foregoing (the “Released Parties”). The Released Claims are hereby compromised, settled,  
7 released, discharged and dismissed as against the Released Parties on the merits and with  
8 prejudice by virtue of the proceedings herein and this Final Judgment and Order of Dismissal  
9 with Prejudice. For the avoidance of doubt, nothing contained herein shall be deemed to release,  
10 bar, waive, impair or otherwise impact: (1) any claims to enforce the Settlement and the  
11 transactions required pursuant to the Settlement; (2) any claims belonging to the Debtors, their  
12 current affiliates or their successors in interest or otherwise asserted by the Debtors, their current  
13 affiliates or their successors in interest against any other Released Party, or any Released Party’s  
14 defenses, counterclaims or claims for indemnification, if any—other than claims for  
15 indemnification with respect to payments made to defend or settle the Action—with respect  
16 thereto; (3) claims by any Released Party against the Debtors in the Chapter 11 Cases, including  
17 indemnification claims—other than claims for indemnification with respect to payments made to  
18 defend or settle the Action—or the Debtors’ defenses and counterclaims with respect thereto;  
19 provided, however, that, to the extent that any Contributing Carriers claim subrogation rights  
20 against the Debtors on the basis of the Released Parties’ indemnification claims, all such claims  
21 and the Debtors’ defenses with respect thereto are expressly preserved; (4) except to the extent  
22 released pursuant to the settlement agreement in the class action styled *In re Washington Mutual,*  
23 *Inc. ERISA Litigation*, Lead Case No. 07-cv-1874 (W.D. Wash.), claims, if any, by any Class  
24 Member against the Released Parties arising under the Employee Retirement Income Security  
25 Act of 1974, 29 U.S.C. § 1001, *et seq.* (“ERISA”) that are separate and do not arise from or  
26 relate to the claims asserted in the Action; (5) claims by any Class Member individually in the

Chapter 11 Cases based solely upon such Class Member's status as a holder or beneficial owner (as opposed to a purchaser) of any WMI debt or equity security with respect to their right to participate in the distribution of funds in the Chapter 11 Cases upon confirmation of a chapter 11 plan or otherwise solely to the extent that such distribution is being made on account of such security and not in any way arising from or related to being a Class Member; or (6) any Class Member's right to participate in the distribution of any funds recovered from any of Defendants by any governmental or regulatory agency. For the avoidance of doubt, notwithstanding the designation of a party as a "Released Party," the Settlement Agreement only operates to release the Released Party from a claim, counterclaim or defense that is a Released Claim.

9. Defendants and their heirs, executors, administrators, predecessors, successors and assigns of any of them and the other Released Parties, are hereby permanently barred and enjoined from instituting, commencing or prosecuting any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known claims and Unknown Claims, that have been or could have been asserted in the Action or any forum by the Defendants or any of them or the successors and assigns of any of them against any of the Lead Plaintiffs, other Class Members or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Action (except for claims to enforce the Settlement or the transactions required pursuant to the Settlement) (the "Released Defendants' Claims"). The Released Defendants' Claims of all the Released Parties are hereby compromised, settled, released, discharged and dismissed on the merits and with prejudice by virtue of the proceedings herein and this Final Judgment and Order of Dismissal with Prejudice.

10. With respect to any and all Released Claims and Released Defendants' Claims, the parties stipulate and agree that upon the Effective Date, the Lead Plaintiffs and the Defendants shall expressly waive, and each Class Member shall be deemed to have waived, and

1 by operation of the Judgment shall have expressly waived, any and all provisions, rights and  
2 benefits conferred by any law of any state or territory of the United States, or principle of  
3 common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which  
4 provides:

5           A general release does not extend to claims which the creditor does  
6           not know or suspect to exist in his or her favor at the time of  
7           executing the release, which if known by him or her must have  
8           materially affected his or her settlement with the debtor.

9           Lead Plaintiffs and Defendants acknowledge, and all other Class Members by operation of law  
10          shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition  
11          of Released Claims and Released Defendants' Claims was separately bargained for and was a  
12          key element of the Settlement.

13          11.       Notwithstanding the provisions of ¶¶ 8, 9 and 10 hereof, (i) in the event that any  
14          of the Released Parties asserts against the Lead Plaintiffs, any other Class Member or Plaintiffs'  
15          Counsel, any claim that is a Released Defendants' Claim, then Lead Plaintiffs, such Class  
16          Member or Plaintiffs' Counsel shall be entitled to use and assert such factual matters included  
17          within the Released Claims against such Released Party only in defense of such claim but not for  
18          the purposes of affirmatively asserting any claim against any Released Party; and (ii) in the event  
19          that any of the Lead Plaintiffs, any other Class Member or Plaintiffs' Counsel asserts against any  
20          Released Parties any Released Claims, such Released Parties or their respective counsel shall be  
21          entitled to use and assert such factual matters included within the Released Defendants' Claims  
22          against such claimant only in defense of such claim but not for the purposes of affirmatively  
23          asserting any claim against any such claimant.

24          12.       Neither this Final Judgment and Order of Dismissal with Prejudice, the Settlement  
25          Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings  
26          connected with it, shall be:

1 (a) offered or received against any Defendant as evidence of or construed as  
2 or deemed to be evidence of any presumption, concession, or admission by any Defendant with  
3 respect to the truth of any fact alleged by any of the plaintiffs or the validity of any claim that has  
4 been or could have been asserted in the Action or in any litigation, or the deficiency of any  
5 defense that has been or could have been asserted in the Action or in any litigation, or of any  
6 liability, negligence, fault, or wrongdoing of any Defendant;

7 (b) offered or received against any Defendant as evidence of a presumption,  
8 concession or admission of any fault, misrepresentation or omission with respect to any  
9 statement or written document approved or made by any Defendant;

10 (c) offered or received against any Defendant as evidence of a presumption,  
11 concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any  
12 way referred to for any other reason as against any Defendant, in any other civil, criminal or  
13 administrative action or proceeding, other than such proceedings as may be necessary to  
14 effectuate the provisions of the Settlement Agreement; provided, however, that Defendants may  
15 refer to it to effectuate the liability protection granted them hereunder;

16 (d) construed against Lead Plaintiffs or any of the other Class Members or  
17 against any Defendant as an admission or concession that the consideration to be given  
18 hereunder represents the amount which could be or would have been recovered after trial; or

19 (e) construed as or received in evidence as an admission, concession or  
20 presumption against Lead Plaintiffs or any of the other Class Members that any of their claims  
21 are without merit, or that any defenses asserted by any Defendant have any merit, or that  
22 damages recoverable under the Complaint would not have exceeded the Gross Settlement Fund.  
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1           13.     The Plan of Allocation is approved as fair and reasonable, and Plaintiffs' Counsel  
2 and the Claims Administrator are directed to administer the Settlement Agreement in accordance  
3 with its terms and provisions.

4           14.     The Court finds that all parties and their counsel have complied with each  
5 requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein.  
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7           15.     Plaintiffs' Counsel are hereby awarded 29% of the Gross Settlement Fund in fees,  
8 which sum the Court finds to be fair and reasonable, and \$879,674.77 in reimbursement of  
9 expenses, which amounts shall be paid to Plaintiffs' Co-Lead Counsel from the Settlement Fund  
10 with interest from the date such Settlement Fund was funded to the date of payment at the same  
11 net rate that the Settlement Fund earns. The award of attorneys' fees shall be allocated among  
12 Plaintiffs' Counsel in a fashion which, in the opinion of Plaintiffs' Co-Lead Counsel, fairly  
13 compensates Plaintiffs' Counsel for their respective contributions in the prosecution of the  
14 Action.

15           16.     In making this award of attorneys' fees and reimbursement of expenses to be paid  
16 from the Gross Settlement Fund, the Court has considered and found that:  
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18                 (a)     the Settlement has created a fund of \$41.5 million in cash that is already  
19 on deposit, plus interest thereon, and that numerous Class Members who submit acceptable  
20 Proofs of Claim will benefit from the Settlement;

21                 (b)     Over 490,000 copies of the Notice were disseminated to putative Class  
22 Members indicating that Plaintiffs' Counsel were moving for attorneys' fees in an amount not to  
23 exceed one-third (33⅓%) of the Gross Settlement Fund and for reimbursement of their expenses  
24 in the approximate amount of \$1,000,000 and only three (3) objections were filed against the  
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1 terms of the proposed Settlement or the ceiling on the fees and expenses requested by Plaintiffs’  
2 Counsel contained in the Notice;

3 (c) Plaintiffs’ Counsel have conducted the litigation and achieved the  
4 Settlement with skill, perseverance and diligent advocacy;  
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6 (d) The Action involves complex factual and legal issues and was actively  
7 prosecuted over nearly seven years and, in the absence of a settlement, would involve further  
8 lengthy proceedings with uncertain resolution of the complex factual and legal issues;

9 (e) Had Plaintiffs’ Counsel not achieved the Settlement there would remain a  
10 significant risk that the Class may have recovered less or nothing from Defendants;  
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12 (f) Plaintiffs’ Counsel have devoted over 18,000 hours, with a lodestar value  
13 of \$8,900,000 to achieve the Settlement; and

14 (g) The amount of attorneys’ fees awarded and expenses reimbursed from the  
15 Settlement Fund are fair and reasonable and consistent with awards in similar cases.  
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17 17. Exclusive jurisdiction is hereby retained over the parties and the Class Members  
18 for all matters relating to this Action, including the administration, interpretation, effectuation or  
19 enforcement of the Settlement Agreement and this Final Judgment and Order of Dismissal with  
20 Prejudice, and including any application for fees and expenses incurred in connection with  
21 administering and distributing the settlement proceeds to the members of the Class; provided,  
22 however, that the Bankruptcy Court shall retain exclusive jurisdiction over the interpretation and  
23 enforcement of the Bankruptcy Court Approval Order.

24 18. Without further order of the Court, the parties may agree to reasonable extensions  
25 of time to carry out any of the provisions of the Settlement Agreement.  
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1 FOR THE FOREGOING REASONS, the Court GRANTS Lead Plaintiffs' motion for  
2 final approval of class action settlement and plan of allocation of settlement proceeds (Dkt. No.  
3 269) and GRANTS Lead Counsel's motion for award of attorneys' fees and reimbursement of  
4 expenses (Dkt. No. 270). This action is DISMISSED WITH PREJUDICE.

5 DATED this 5th day of June 2012.

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A handwritten signature in black ink, reading "John C. Coughenour", written over a horizontal line.

John C. Coughenour  
UNITED STATES DISTRICT JUDGE

**EXHIBIT 1****List of Persons and Entities Requesting Exclusion from the Class in *South Ferry LP #2 v. Kerry K. Killinger, et al.*, Case No. C04-1599 JCC**

The following persons and entities have properly requested exclusion from the Class in *South Ferry LP #2 v. Kerry K. Killinger, et al.*, Case No. C04-1599 JCC, and are not members of the Class bound by this Final Judgment and Order of Dismissal with Prejudice:

No.	Name	Address
1	Katherine Walker Childs	12510 NE 94th Street Kirkland, WA 98033-5875
2	Ruth E. Bridges	1827 Thornhill Rd. #107 Wesley Chapel, FL 33544
3	Charlie Rivera	12143 Maple Ridge Dr. Parrish, FL 34219
4	Denny Sue Johnson	Box 1714 Gold Beach, OR 97444
5	Lillian N. Mosley R.E. Mosley	275 County Road 4247 DeKalb, TX 75559
6	Ernest A. Dahl	2226 Vista Hogar Newport Beach, CA 92660
7	Donald W. Dearment	500 E. Pitt St. Bedford, PA 15522
8	Arthur Nelson	P.O. Box 129 Seekonk, MA 02771
9	Mary Nake Bond	7923 Colonel Glenn Rd. Little Rock, AR 72204
10	Charles W. Hadley Ethel S. Hadley	3907 NE 110th St. Seattle, WA 98125
11	Earl F. O'Connor	7343 S. Sherman Dr. Indianapolis, IN 46237
12	Abe Price	158 Lollypop Lane #3 Naples, FL 34112-5109
13	Jane K. Whitney	6609 Markstown Drive Apt. B Tampa, FL 33617-9365
14	Mark Paper	700 Twelve Oaks Center Dr. Ste. 711 Wayzata, MN 55391

15	Edward T. Flotz	127 Franconian Dr. S. Frankenmuth, MI 48734
16	Bradley Keding	15545 Meyer Ave. Allen Park, MI 48101
17	Debra A. Langford	1480 North Meadow Rd. Merrick, NY 11566
18	Josephine R Burns	P.O. Box 546 El Granada, CA 94108-0546
19	Moirra L. L. Nichols	33 Linda Ave. Apt. 2003 Oakland, CA 94611
20	Richard J. Imbra	3312 Grandada Ave. San Diego, CA 92104
21	Bruce MacLeod	556 Mill Street Ext. Lancaster, MA 01523
22	John Mitchell Campbell Jr.	16 East Fox Chase Rd. Chester, NJ 07930
23	Janet Schultz	846 Newport Bay Dr. Edwardsville, IL 62025
24	Susan Iorns	16 Ocean Parade Pukerua Bay Porirua 5026 New Zealand
25	Cordelia F Biddle H. Stephen Zettler	514 Pine Street Philadelphia, PA 19106
26	Lawrence Papola Marie Papola	191 Atlantic Pl. Hauppauge, NY 11788
27	Carl Hunter	4030 30th Ave. West Seattle, WA 98199-1709
28	Steven W. Loring	91-1040-Puamaeole St. #S Ewa Beach, HI 96706
29	Margaret P. Jones	737 Pinebrook Dr. Virginia Beach, VA 23462
30	Bruce Alexander	10464 SW 118 St. Miami, FL 33176
31	Paul Putnam Mona Putnam	1140 Portola Ave. Escondido, CA 92026-1732
32	Douglas Duncan	679 Flamenco Pl. Davis, CA 95616
33	Robert Born Ophelia Born	8800 Glacier Ave. Apt. 302 Texas City, TX 77591-3052

34	John G. Clapp	12 Sunset Drive Apt. 2 Alexandria, VA 22301-2640
35	Jacquelyn Clarke	10465 Dunlop Rd. Delta, BC V4C 2L1, Canada
36	Bonnie J. Orr Rufus D. Orr	7536 32nd Ave. NW Seattle, WA 98117-4646
37	Charles GaGaig	P.O. Box 7666 Northridge, CA 91327
38	Don Thorsteinson	5775 Hampton Place #1006 Vancouver, B.C. V6T 2G6
39	David P. Yaffe	10416 Wyton Dr. Los Angeles, CA 90024
40	Michelle Jurczak	325 Kennedy Ave. Toronto, Ontario M6P 3C4
41	John G. Hudson	P.O. Box 283 Fort Smith, AR 72902
42	Carl P. Irwin	10 White Oak Dr. Apt# 218 Exeter, NH 03833-5314
43	Margaret K. Oliver Kay Collins	1002-5614 Balsam St. Vancouver BC V6M 4B7
44	John G. Hudson Living Trust	P.O. Box 283 Fort Smith, AR 72902
45	Rosemary Pacheco	338 Orchard St. Raynham, MA 02767-9385
46	Kathleen Guilfoyle	214 Northline Rd. Ballston Spa, NY 12020